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U.S. Department of Justice

Federal Bureau of Investigation

Office of the General Counsel

Washington, D.C. 20535

December 15, 2000

By Hand Delivery

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-B204  
Washington, D.C. 20554

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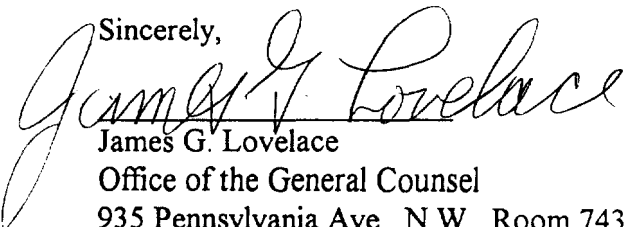
Re: *Joint Petition to Defer in the Matter of VoiceStream Wireless Corporation Powertel, Inc., and Deutsche Telekom AG ("DT") to permit, pursuant to Section 310(b)(4), 100 percent Indirect Foreign Ownership by Deutsche Telekom of Licenses and authorizations held by Voicestream and Powertel. (File No. 0000211827 DA 00-2251).*

Dear Ms. Salas:

Transmitted herewith, on behalf of VoiceStream Wireless Corporation ("VoiceStream"), Powertel, Inc. ("Powertel") (Collectively "transferors") and Deutsche Telekom AG ("DT" or "transferee"), and the Federal Bureau of Investigation ("FBI") are an original and four copies of a Joint Petition to Defer in the above-referenced matter. The enclosed petition requests that the Commission accept this Petition and defer the grant of authorizations requested in the above-referenced applications and docket pending a resolution by the parties of those aspects of the applications that give rise to national security, law enforcement, and public safety concerns.

Any questions regarding VoiceStream or Powertel should be directed to the respective undersigned counsel, and questions regarding DT should be directed to Deutsche Telekom, Inc. at 202-452-0656.

Sincerely,



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Enclosures

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

**In the Matter of:**

**VoiceStream Wireless Corporation,  
Powertel, Inc.,**

**Transferors**

**and**

**Deutsche Telekom AG ("DT")**

**Transferee**

**For Consent to Transfer Control of  
Licenses and Authorizations and  
for Declaratory Ruling pursuant to  
Section 310(b)(4) allowing 100 percent  
Indirect Foreign Ownership by DT of  
Transferors Licenses and Authorizations**

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**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

**IB Docket No. 00-187 /**

**DA 00-2251**

**File No 0000211827**

**To: The Wireless Bureau and the International Bureau**

**JOINT PETITION TO DEFER**

VoiceStream Wireless Corporation ("VoiceStream"), Powertel, Inc. ("Powertel"), (collectively "transferors"), corporations organized under the laws of the United States, and Deutsche Telekom AG ("DT" or "transferee"), a corporation organized under the laws of the Federal Republic of Germany, and the Federal Bureau of Investigation ("FBI"), (collectively, the "parties"), through their attorneys, respectfully request that the Federal Communications Commission ("Commission") (a) accept this Petition<sup>1</sup> (b) defer grant of the above-captioned

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<sup>1</sup>The filing of this petition two days after the date for submission of comments (see Order, VoiceStream Wireless Corp., Powertel, Inc. and Duetsche Telekom AG, IB Docket No. 00-187, DA 00-2521 (rel. Nov. 8, 2000), should in no way prejudice any interested party's ability to reply as the deadline for filing responses is January 8, 2000.

applications pending a resolution by the parties, and the Department of Justice ("DOJ"), of those aspects of the applications that may raise potential national security, law enforcement, and public safety issues, and (c) condition any such grant on compliance with the terms of an agreement entered into to address those issues.

In the captioned docket, VoiceStream, Powertel, and DT have each filed applications under Sections 214 and 310(d) of the Communications Act of 1934, as amended, ("the Act"), 47 U.S.C. §§ 214, 310 (1997), seeking Commission consent to transfer control of licenses and authorizations presently held by VoiceStream, Powertel, and their subsidiaries to DT.<sup>2</sup> As of September 18, 2000, 58.2% of DT was owned by the German government. According to the applicants' filings with the Commission, the transfer of control would take place as the result of a proposed merger, whereby first VoiceStream, and then Powertel, would become wholly owned subsidiaries of DT.<sup>3</sup> To permit such foreign control, VoiceStream and Powertel have each also filed petitions pursuant to section 310(b)(4) of the Act for a declaratory ruling that the 100 percent indirect foreign ownership by DT of licenses held or controlled by VoiceStream,

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<sup>2</sup> The services to which these applications pertain are: Personal Communications Service ("PCS"), Specialized Mobile Radio ("SMR"), Experimental and Fixed Microwave services, Local Multipoint Distribution Service "LMDS"), and international Section 214 authorizations.

<sup>3</sup> VoiceStream and Powertel also filed a separate set of applications seeking Commission consent to allow Powertel to become a wholly owned subsidiary of VoiceStream rather than DT, in the event the proposed VoiceStream-DT merger is not approved. With respect to the acquisition of Powertel by VoiceStream, the FBI and DOJ request that the Commission condition the transfer of control of Powertel licenses and authorization to VoiceStream on compliance with the provisions of the Agreement made on January 26, 2000, between VoiceStream and VoiceStream Wireless Holding Corporation and the DOJ and the FB, and adopted as a condition to the authority granted by the Commission in the following proceeding: *VOICESTREAM & OMNIPOINT*, File Nos. 0000016354, et al. DA 99-1634, 15 FCC Rcd. 3341 (February 15, 2000).

Powertel, and their subsidiaries is in the public interest.<sup>4</sup> VoiceStream has also filed, and VoiceStream and Powertel may hereafter file, additional requests for approval of DT's acquisitions of noncontrolling interests held (or proposed to be held) by VoiceStream or Powertel in other licenses, as well as requests for Commission consent to assign or to transfer control of additional licenses to VoiceStream<sup>5</sup> and Powertel, which would in turn be included in the scope of any Commission approval of the transfer of control of to DT.

If the merger closes, the resulting entity would be a substantial U.S. wireless service provider with near-nationwide coverage of Personal Communications Service ("PCS") throughout the United States and Europe using the global system for mobile communications ("GSM") standard. The combination of VoiceStream's and Powertel's networks with DT's extensive systems in Europe will further enable the merged entity to provide advanced wireless services and new services.

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<sup>4</sup> The VoiceStream petition for declaratory ruling has been assigned File No. ISP-PDR-20000918-00031. The Powertel petition for declaratory ruling has been assigned File No. ISP-PDR-20000918-00030.

<sup>5</sup> See Applications of Cook Inlet Region, Inc., Transferor, and VoiceStream Wireless Corporation, Transferee, et al., consented by Order dated Dec. 13, 2000, DA 00-2820; Application for consent to assign licenses from STPCS D Block, LLP to VoiceStream PCS BTA I License Corporation, consented by Public Notice dated Dec. 6, 2000, Report Number 717; Application to assign licenses from Shenandoah Mobile Company to Cook Inlet/Vs GSM IV PCS, LLC and VoiceStream PCS BTA I License Corporation, respectively, consented by Public Notice dated Nov. 29, 2000, Report Number 711; Application to partially assign licenses KNLF249 and KNLF253 from AT&T Wireless PCS, L.L.C. to Omnipoint Holdings, Inc., File No. 0000192987 (filed July 27, 2000); Application for consent to partially assign license KNLF209 from Pacific Telesis Mobile Services, LLC to Cook Inlet/VoiceStream GSM II PCS, LLC (filed Dec. 11, 2000) (paper filing; file no. to be assigned); Application for consent to disaggregate license KNLF205 from Pacific Telesis Mobile Services, LLC to Omnipoint NY MTA License, LLC, File No. 0000287262 (filed Dec. 11, 2000); Application for consent to disaggregate license KNLF209 from Pacific Telesis Mobile Services, LLC to Omnipoint NY MTA License, LLC, File No. 00000288898 (filed Dec. 11, 2000); Application for consent to disaggregate license KNLF209 from Pacific Telesis Mobile Services, LLC to VoiceStream PCS II License Corporation, File No. 0000287259 (filed Dec. 11, 2000).

Because this resulting substantial U.S. wireless carrier using GSM technology would ultimately, after the mergers, be subject to control by an entity of which approximately 44 percent would be owned by a foreign government, the FBI and the DOJ have concerns that the merger could, absent an appropriate agreement, impair the ability of authorized governmental agencies in the U.S. to satisfy their obligations to preserve the national security, enforce the laws, and protect the public safety. To the extent the applicants seek authority to ultimately transfer control of these licenses to DT, the FBI and DT request that, until the parties reach an agreement that adequately addresses the national security, law enforcement, and public safety issues potentially presented by the transactions, the Commission defer approving any grant of authority for DT to acquire control of any of the foregoing licenses, authorizations or noncontrolling interests.

Because the integrity of U.S. telecommunications services is critical to the ability of our government to preserve the national security, enforce the laws, and maintain the safety of the public, the FBI and the DOJ have previously availed themselves of the opportunity under Sections 214 and 310 of the Act, and implementing regulations, to comment regarding the public interest concerns raised by particular transactions. In *the Foreign Participation Order*, the Commission said that, in reviewing license applications from foreign carriers under Sections 214 and 310(b)(4) of the Communications Act, it would: (1) continue to apply the public interest test, and (2) "continue to find national security, law enforcement, foreign policy and trade policy concerns relevant to our decision to grant or deny Section 214 and 310(b)(4) applications from

applicants from WTO Member[s]."<sup>6</sup> The Commission elaborated by saying that:

[W]e realize that foreign participation in the U.S. telecommunications market may implicate significant national security or law enforcement issues uniquely within the expertise of the Executive Branch. . . .

We thus will continue to accord deference to the expertise of Executive Branch agencies in identifying and interpreting issues of concern related to national security, law enforcement, and foreign policy that are relevant to an application pending before us.<sup>7</sup>

It is the opinion of the FBI and the DOJ that granting the authority requested by the parties in this transaction could present significant impediments to the ability of our government to meet its obligations to the citizens to preserve the national security, enforce the laws and protect the public safety. These obligations can only be satisfactorily fulfilled by the implementation of an agreement and the imposition of conditions which will ensure that the degree of foreign ownership of U.S. telecommunications facilities and services proposed here does not impair the ability of Federal, State and local governments to: (1) conduct securely and effectively lawfully-authorized electronic surveillance of domestic U.S. calls or calls that originate or terminate in the United States; (2) prevent and detect foreign-based or other illegal electronic surveillance within the United States, which may jeopardize the security of the United States and privacy of U.S. telecommunications; and (3) satisfy U.S. National Security Emergency Preparedness and U.S. infrastructure protection requirements.

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<sup>6</sup> *In the Matter of Rules and Policies of Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23,891; Para. 61 (Nov. 1997). The presumption the Commission has adopted "in favor of entry for foreign participation applies only to competition concerns that may arise because of a foreign carrier's market power in a foreign market." para. 57. Concerns relating to national security, law enforcement, and public safety are to be given consideration independent of any competitive concerns presented by the transaction.

<sup>7</sup> *In the Matter of Rules and Policies of Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23,891; Paras. 62-63 (Nov. 1997).

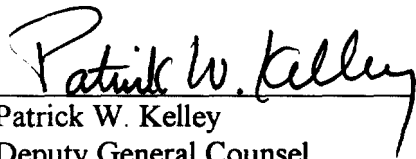
In their respective filings with the Commission, DT, VoiceStream, and Powertel have each committed to enter into an agreement with Executive Branch agencies to address fully the potential threats posed to national security, law enforcement and public safety that this transaction presents, and have each further agreed to the subsequent conditioning of the affected authorizations on compliance with that agreement.<sup>8</sup> The parties are currently and in good faith working diligently towards such an agreement. Accordingly, the parties jointly urge the Commission to defer considering the application or approving the transferring of the attendant licenses absent such an agreement and the imposition of appropriate conditions.

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<sup>8</sup> See Powertel Application at 24 n.68; VoiceStream Application at 42-43.

Wherefore, in view of the foregoing, the parties respectfully request that the Commission accept for filing the instant Petition to Defer with regard to the captioned applications pending an agreement among the parties to resolve the concerns addressed herein, and the imposition of the terms of such agreement as conditions to the licenses.

Date: December 15, 2000



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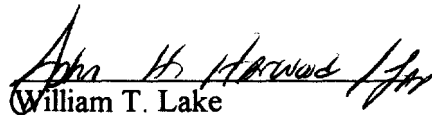
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## Certificate of Service

I, Myla Saldivar-Trotter, Federal Bureau of Investigation, hereby certify that a true copy of the foregoing **Joint Petition to Defer** served this 15th day of December, 2000 via hand delivery (indicated by \*) or by mail to the following parties:

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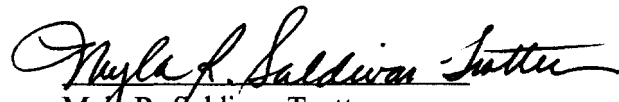
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